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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 101 Pipe & Casing Incorporated,

10 Plaintiff,

11 v.

12 Kingman Farms LLC, *et al.*,

13 Defendants.
14

No. CV-15-08279-PCT-JJT

ORDER

15 At issue are Plaintiff 101 Pipe & Casing Incorporated's Motion for Summary
16 Judgment (Doc. 30, Mot.), to which Defendant James Rhodes did not file a response, and
17 this Court's March 3, 2017 Order to Show Cause (Doc. 37), to which Defendant also
18 failed to file a response.

19 **I. BACKGROUND**

20 Plaintiff filed its Complaint on November 18, 2015. (Doc. 1.) On September 13,
21 2016, Defendant Kingman Farms LLC filed a Notice of Filing Bankruptcy. (Doc. 27.) As
22 a result, this Court ordered the claims against Kingman Farms were stayed and would be
23 dismissed without further notice on November 14, 2016. (Doc. 28.) On January 18, 2017,
24 the Court dismissed the claims against Kingman Farms LLC pursuant to its previous
25 Order. (Doc. 32.) On January 10, 2017, Plaintiff brought the current Motion seeking
26 summary judgment against Defendant James Rhodes. (Doc. 30.) On January 20, 2017,
27 Defendants' former counsel filed a stipulation for extension of time to respond to
28 Plaintiff's Motion, purportedly to allow Defendant time to retain new counsel. (Doc. 33.)

1 The Court granted that stipulation, as well as counsel's subsequent motion to withdraw
2 (Doc. 34), on March 7, 2017. (Doc. 36.) In that Order, the Court stated that "Defendant
3 James Rhodes shall either retain counsel who shall file a notice of appearance in this
4 matter by February 27, 2017, or file a notice by that date advising that he intends to
5 proceed in *pro se*." (Doc. 36.) Defendant failed to do either and subsequently failed to file
6 a timely opposition to Plaintiff's Motion. On March 7, 2017, this Court ordered that
7 Defendant show cause why the Court should not grant Plaintiff's Motion by March 17,
8 2017. (Doc. 37.) Again, Plaintiff failed to abide by the Court's Order, and the Court now
9 considers Plaintiff's Motion and Defendant's failure to respond to that Motion, or this
10 Court's multiple Orders.

11 **II. LEGAL STANDARD**

12 Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is
13 appropriate when: (1) the movant shows that there is no genuine dispute as to any
14 material fact; and (2) after viewing the evidence most favorably to the non-moving party,
15 the movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v.*
16 *Catrett*, 477 U.S. 317, 322–23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285,
17 1288–89 (9th Cir. 1987). Under this standard, "[o]nly disputes over facts that might affect
18 the outcome of the suit under governing [substantive] law will properly preclude the
19 entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
20 A "genuine issue" of material fact arises only "if the evidence is such that a reasonable
21 jury could return a verdict for the non-moving party." *Id.*

22 In considering a motion for summary judgment, the court must regard as true the
23 non-moving party's evidence if it is supported by affidavits or other evidentiary material.
24 *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. "Summary judgment must be
25 entered 'against a party who fails to make a showing sufficient to establish the existence
26 of an element essential to that party's case, and on which that party will bear the burden
27 of proof at trial.'" *United States v. Carter*, 906 F.2d 1375, 1376 (9th Cir. 1990) (quoting
28 *Celotex*, 477 U.S. at 322).

1 **III. ANALYSIS**

2 **A. Summary Judgment**

3 Plaintiff seeks summary judgment on the grounds that Defendant is in breach of
 4 contract and owes unpaid principal balance of \$580,021.50, plus late fees, interest,
 5 attorneys' fees, and court costs pursuant to his contractual obligations. (Mot. at 2.)
 6 Plaintiff presents uncontroverted facts that it contracted with Kingman Farms for Plaintiff
 7 to provide steel pipe and other related items. Kingman Farms, now in bankruptcy, failed
 8 to pay the principal balance on that contract, despite receiving its benefit. As such,
 9 Kingman Farms breached the contract. Because Defendant guaranteed the payment of
 10 Kingman Farms, Plaintiff now seeks to recover its damages against him.

11 After Plaintiff filed its Motion for Summary Judgment, this Court (1) directed
 12 Defendant to file an opposition showing a triable issue and (2) explicitly warned him that
 13 his failure to do so could be construed as his consent to the granting of Plaintiff's Motion
 14 pursuant to Local Rule of Civil Procedure 7.2(i). (Doc. 37.) Previously, after his counsel
 15 withdrew from the matter, the Court cautioned Defendant that he would be "held to
 16 comply with all court orders in this matter, as well as the Federal Rules of Civil
 17 Procedure, the Local Rules of Practice for the District Court of Arizona, the Federal
 18 Rules of Evidence and any other applicable federal rules." (Doc. 36.) Despite having
 19 been given two opportunities to do so, Defendant failed to comply with the Court's
 20 directives. As such, the Court is warranted in granting Plaintiff's Motion solely due to
 21 Defendant's lack of response and failure to comply with this Court's Orders. LRCiv
 22 7.2(i) ("if the opposing party does not serve and file the required answering memoranda .
 23 . . such non-compliance may be deemed a consent to the denial or granting of the motion
 24 and the Court may dispose of the motion summarily"); *Brydges v. Lewis*, 18 F.3d 651,
 25 653 (9th Cir. 1994) (upholding district court's grant of summary judgment where *pro se*
 26 Plaintiff was warned of the consequence of his failure to respond to a motion for
 27 summary judgment); *see also Henry v. Gill Industries, Inc.*, 983 F.2d 943, 950 (9th Cir.
 28 1993) (noting that "[a] local rule that requires the entry of summary judgment simply

1 because no papers opposing the motion are filed or served, and without regard to whether
2 genuine issues of material fact exist, would be inconsistent with [Fed. R. Civ. P.] 56,
3 hence impermissible under [Fed. R. Civ. P.] 83,” but finding that when the local rule does
4 not require, but permits the court to grant summary judgment, the district court has
5 discretion to determine whether noncompliance should be deemed consent to the motion).

6 Even were the Court required to conduct a detailed review of Plaintiff’s Motion
7 and supportive evidence, which it is not, the Plaintiff is entitled to summary judgment.
8 Fed. R. Civ. P. 56(a); *see also Carmen v. S.F. Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir.
9 2001) (“[t]he district court need not examine the entire file for evidence establishing a
10 genuine issue of fact, where the evidence is not set forth in the opposing papers with
11 adequate references so that it could conveniently be found”). First, in failing to file a
12 separate, contravening statement of facts as mandated by Federal Rule of Civil Procedure
13 56(e) and Local Rule 56.1(b), Defendant has provided further grounds for summary
14 disposition against him. *See Malcomson v. Topps Co.*, No. CV-02-2306-PHX-GMS, 2010
15 WL 383359, at *3 (D. Ariz. Jan. 28, 2010) (failure to present evidence supporting an
16 alternative version of facts precludes determination that there is a genuine issue for trial).
17 Second, without a separate statement of facts, or any filings whatsoever, Defendant has
18 also failed to provide admissible evidence contradicting Plaintiff’s claims as required
19 under Local Rule 56.1(b). Thus, each paragraph of Plaintiff’s Statement of Facts is
20 deemed admitted. *See Molina v. Phoenix Union High Sch. Dist.*, No. CIV 05-0751-PHX-
21 SMM, 2007 WL 1412530, at *2 (D. Ariz. May 14, 2007) (deeming facts not controverted
22 by opposing party admitted). Third, Plaintiff’s filings put forth adequate and inherently
23 uncontroverted evidence supportive of each element of its claim: that (1) the parties
24 contracted for the delivery of product; (2) Plaintiff supplied Kingman Farms with the
25 agreed products; (3) Kingman Farms failed to pay Plaintiff for the full amount of
26 materials supplied; (4) Plaintiff has incurred damages represented by its unpaid principal
27 and the continuing costs associated with it; and (5) that Defendant is liable to Plaintiff as
28 the guarantor of the debt. Accordingly, the Court will grant Plaintiff’s Motion for

1 Summary Judgment. *See United States v. Krieg*, No. C14-01265 CRB, 2014 WL
2 4178197, at *1 (N.D. Cal. Aug. 1, 2014) (finding it permissible to grant summary
3 judgment when the non-movant has failed to respond to the court's show cause order and
4 the Court has not identified either a genuine issue of material fact or any other reason to
5 preclude judgment).

6 **B. Attorneys' Fees and Costs**

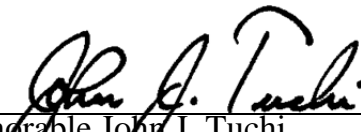
7 Pursuant to A.R.S. § 12-341 and the parties' contract, in which Defendant
8 provides for a recovery of fees and costs should Plaintiff be required to initiate litigation
9 under the agreement, Plaintiff requests its attorneys' fees and costs in bringing this
10 action. The Court agrees that under A.R.S. § 12-341, as evidenced by the Past Due
11 Accounts provision in the parties' agreement, Plaintiff is entitled to seek reasonable
12 attorneys' fees and costs.

13 **IT IS THEREFORE ORDERED** granting Plaintiff 101 Pipe & Casing
14 Incorporated's Motion for Summary Judgment (Doc. 30).

15 **IT IS FURTHER ORDERED** that Plaintiff 101 Pipe & Casing Incorporated
16 shall file its application for attorneys' fees no later than April 28, 2017. The Court will
17 decide what attorneys' fees and costs will be awarded upon review of the parties'
18 briefing.

19 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
20 in the amount of \$580,021.50, which shall bear post-judgment interest at the federal rate
21 from the date of Judgment until paid, and close this matter.

22 Dated this 3rd day of April, 2017.

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25 Honorable John J. Tuchi
26 United States District Judge
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